

COVINGTON & BURLING

BY FAX

April 23, 1996

MEMORANDUM TO THE COMMITTEE OF COUNSEL

Re: Washington State OSHA Litigation

The final two days of trial in the Washington State OSHA case were completed on April 17 and 18, 1996, in the Thurston County Superior Court in Olympia, Washington. We completed our cross-examination of L&I's final witness, John Peard, and both parties presented closing arguments. Yesterday, Judge Strophy ruled in favor of L&I and upheld the ETS rule.

Judge Strophy ruled from the bench, issuing a lengthy and vague opinion. Attached is a brief summary of his ruling prepared by local counsel. We will send to you a full transcript of Judge Strophy's decision when it becomes available.

As previously reported, plaintiffs determined not to present any rebuttal testimony during the trial. As a consequence, L&I withdrew its proffered surrebuttal witnesses, although L&I offered to make them available for the assistance of the Court. The Court declined L&I's invitation. Accordingly, the only witnesses who testified during the proceeding were the three L&I officials responsible for the ETS rule. For your reference, we are attaching L&I's response to our letter of April 5 informing the Court of plaintiffs' decision not to present rebuttal testimony, and our reply dated April 15.

Local counsel is preparing a memorandum regarding the procedures and options for appeal. As soon as we receive a transcript of Judge Strophy's ruling, we will provide you with our initial recommendations regarding a possible appeal.

Clausen Ely, Jr.
Michael D. Granston

Encls.

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